

Claim 7 is deleted with this amendment, and spacing of claims 1, 4, 5 and 7 has been carefully checked and corrected.

#### REJECTIONS UNDER 35 USC 102

Claim 1 is rejected as being anticipated by the reference to Toivola, which discloses a rack comprising a pair of vertical uprights attachable to opposite sides of a front rack of an ATV and a similar pair of vertical uprights attachable to opposite sides of a rear rack of an ATV. At the top of the uprights orthogonal members are mounted between ends of the uprights in both lateral and longitudinal directions with respect to the ATV to form a square or rectangular rack upon which a canoe or the like may be mounted.

In contrast, Applicant's claim 1, as amended to correct antecedence, and at the front of the ATV, calls for "an upright post and a boat-receiving cross member connected at a central location thereof to the top of the post" (underlining added) and a similar structure at the rear of the ATV. A cross beam is connected "to each of said cross members at said central location thereof" (underlining added). No such structure is found, suggested or inferred in the reference to Toivola. As such, it is respectfully submitted that since a rejection under 35 USC 102 requires that "Anticipation under § 102 can be found only when the reference discloses exactly what is claimed..." (underlining added, MPEP 2131) and that "each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference" (underlining added,

MPEP 2131.03). As the claims specify "an upright post...", "a boat-receiving cross member connected at a central location thereof to the top of the post..." and "an elongated upper beam member connected to each of said cross members at said central location", clearly defining a rack with single, centrally mounted posts at a front and rear and a single cross member between the posts and at the central location, the rejection of claim 1 is believed to be defective, and should be withdrawn.

#### REJECTIONS UNDER 35 USC 103

Dependent claim 2, rejected over the reference of Tiovola and Young, adds the additional limitation to the composite rack of claim 1 that "each of said posts and said members are made of rectangular metal tubing". As claim 2 depends from a base claim believed allowable, claim 2 should be allowable upon claim 1 being found allowable.

With respect to independent claim 8, and as noted above, the rack of Toivola comprises a pair of vertical uprights attached to opposite sides of a front rack of an ATV and a similar pair of vertical uprights attachable to opposite sides of a rear rack of an ATV. At the top of the uprights, and on each side of the ATV, strut members are mounted orthogonally between ends of the uprights in both lateral and longitudinal directions with respect to the ATV to form a square or rectangular rack upon which a canoe or the like may be mounted. In contrast, Applicant's rack of claim 8 comprises a "first upright post mounted on said front platform and a second upright post

mounted on said rear platform, each said post having a bottom end connected to a base member on a said platform and a top end connected to a middle portion of one of a pair of boat-receiving horizontal cross members...” (underlining added).

Initially, a careful reading of the reference to Toivola reveals that there is no mention whatsoever of any need or desirability of adjusting height of his rack. As such, there is no motivation in Toivola for such a feature (MPEP 2143.01, “The prior art must suggest the desirability of the claimed invention”). Also, the teaching or suggestion to combine must not be taken from Applicant’s own disclosure (MPEP 2143, the teaching or suggestion to make the claimed combination and the reasonable expectation of success must be found in the art, not in Applicant’s disclosure). It is respectfully submitted that the only suggestion to combine the references of Toivola and Young as suggested by the Examiner is only found in Applicant’s own disclosure, and not in the prior art, constituting improper hindsight reconstruction. Please also see MPEP 2143.01 III (fact that references can be combined or modified is not sufficient to establish *prima facie* obviousness) and MPEP 2143.02 V (fact that the claimed invention is within the capabilities of one of ordinary skill in the art is not sufficient by itself to establish *prima facie* obviousness). In view of the foregoing, it is respectfully submitted that the Examiner has not made a *prima facie* case for obviousness as required under 35 USC 103(a) with respect to claim 8. It is also noted that the rack of Toivola, which includes 4 upright posts and 2 connecting members, is far more complicated and cumbersome to

install and remove on/from an ATV. Also, since there is substantially more mass in Toivola above a center of gravity of the ATV, the rack of Toivola is more prone to tipping the ATV over.

Dependent claim 3 adds the further limitation to the composite invention of claims 1 and 2 wherein "each of said boat-receiving members has an upturned arm at each end". Again, the reference of Toivola does not teach, suggest or infer such a modification. Straps and buckles 70, 72 (Fig. 1, Col. 3 lines 57 - 63) render such a modification unnecessary. Also, as claim 3 depends from a base claim believed allowable, claim 3 should also be found allowable upon claim 1 being found allowable.

Dependent claim 4 adds the additional limitation to the composite invention of claims 1, 2, and 3 "wherein each of said vertical posts includes overlapping tubing of different sizes and a series of vertically spaced-apart holes defined therein enabling connecting bolts to be inserted at different heights". As noted with respect to claim 8, there is no teaching, suggestion or inference in Toivola of any need or desirability to adjust height of his rack. Such a feature for a canoe carrier is only found in Applicant's own disclosure as discussed above. Also, as claim 4 is dependent on a base claim found allowable, claim 4 should also be found allowable upon claim 1 being found allowable.


Dependent claim 5 adds the further limitation to the composite invention of claims 1 - 4 that the "transporting vehicle" is an ATV. As claim 5 depends from a base claim believed allowable, claim 5 should also be found

allowable upon claim 1 being found allowable. Also, dependent claim 6 adds the further limitation of "said bottom base member is connected to said platform with U-bolts" to the composite device of claim 1. As claim 6 depends from a base claim believed allowable, claim 6 should also be found allowable upon claim 1 being found allowable.

## CONCLUSION

It is respectfully submitted that the Examiner has found a collection of references that separately and independently show the claimed features of the invention. However, and particularly with respect to adjustment of height of the rack, there is no teaching, suggestion or inference in the primary reference of desirability or need of such a feature. Also, Applicant's rack is simpler to assemble and disassemble and install and remove to and from an ATV, and minimizes mass above a center of gravity of the ATV to reduce the risk of tipping the ATV over.

As the application is believed to be in condition for allowance, favorable action is respectfully requested. A substantive specification is included herewith along with a marked-up copy of the originally filed specification showing changes made thereto. No new matter is added with this amendment and substitute specification.

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